



Paper No. 10

Polsinelli Shalton & Welte, P.C.  
700 W. 47th Street, Suite 1000  
Kansas City, MO 64112-1802

**COPY MAILED**

**JAN 14 2004**

**OFFICE OF PETITIONS**

In re Application of  
Lee M. Greenberg, et. al.  
Application No. 09/874,178  
Filed: June 4, 2001  
Attorney Docket No. 53914

**ON PETITION**

This is a decision on the petition under 37 CFR 1.137(b), filed August 13, 2003, to revive the above-identified application.

The petition is **Dismissed**.

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action mailed April 8, 2002, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned after midnight July 8, 2002.

A grantable petition to revive an abandoned application under 37 CFR 1.137(b) must be accompanied by: (1) the required reply (unless previously filed), which may met by the filing of a continuing application in a nonprovisional application abandoned for failure to prosecute, but must be the payment of the issue fee or any outstanding balance thereof in an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof; (2) the petition fee required by 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) a terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)). This petition lacks items (2), (3) and (4) above.

As to item (2), effective October 1, 2003, the small entity petition fee was increased to \$665. Therefore, in order for the Office to consider the instant petition, the required \$665 petition to revive fee must be submitted.

As to item (3), the instant petition is signed by Lee Greenberg, who appears to be one of two inventors. 37 CFR 1.33(b) states:

Amendments and other papers filed in the application must be signed by:

- (1) An attorney or agent of record appointed in compliance with § 1.34(b);
- (2) A registered attorney or agent not of record who acts in a representative capacity under the provisions of § 1.34(a);
- (3) The assignee of record of the entire interest, if there is an assignee of record of the entire interest;

(4) An assignee of record of an undivided part interest, and any assignee(s) of the remaining interest and any applicant retaining an interest, if there is an assignee of record of an undivided part interest; or

(5) All of the applicants (§§ 1.42, 1.43 and 1.47) for patent, unless there is an assignee of record of the entire interest and such assignee has taken action in the application in accordance with §§ 3.71 and 3.73.

If the instant petition is signed on behalf of the assignee, the petition does not comply with 37 CFR 3.73(b). 37 CFR 3.73(b) provides that: (1) when an assignee seeks to take action in a matter before the Office, the assignee must establish its ownership of the property to the satisfaction of the Commissioner; (2) ownership is established by submitting to the Office, in the Office file related to the matter in which action is sought to be taken, documentary evidence of a chain of title from the original owner to the assignee (*e.g.*, copy of an executed assignment submitted for recording) or by specifying (*e.g.*, reel and frame number) where such evidence is recorded in the Office; (3) the submission establishing ownership must be signed by a party authorized to act on behalf of the assignee; and (4) documents submitted to establish ownership may be required to be recorded as a condition to permitting the assignee to take action in a matter pending before the Office. A 37 CFR 3.73(b) statement is enclosed with this decision.

As to item (4), the terminal disclaimer filed August 13, 2003, cannot be accepted since it is signed by only one (1) inventor, and it lacks the required \$55 terminal disclaimer fee.

Petitioner should note that the power of attorney filed August 13, 2003, has been acknowledged. However, since it is also signed by only one inventor, it will not be entered.

Petitioner, Lee Greenberg, is asked to submit the \$665 petition fee, \$55 terminal disclaimer fee, and to either re-submit the petition, terminal disclaimer, and power of attorney filed August 13, 2003, to include the signature of Judy Smith or prove rightful ownership by submitting the enclosed Statement under 37 CFR 3.73(b), in accordance with 37 CFR 3.73(b), as stated above.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include the lacking items noted above and a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)."

Further correspondence with respect to this matter should be addressed as follows:

**By Mail:** Mail Stop PETITION  
Commissioner for Patents  
Post Office Box 1450  
Alexandria, VA 22313-1450

**Effective December 1, 2003, the Office of Petitions can no longer receive hand-carried correspondence, or facsimile transmissions of correspondence. The centralized location for hand-carried correspondence is the Customer Window located at:**

2011 South Clark Place  
Crystal Plaza Two, Lobby  
Room 1B03  
Arlington, VA 22202

**The centralized facsimile number is (703) 872-9306.**

Any questions concerning this matter may be directed to Andrea Smith at (703) 308-6711.



Andrea Smith  
Petitions Examiner  
Office of Petitions  
Office of the Deputy Commissioner  
for Patent Examination Policy

Enclosure: Statement Under 37 CFR 3.73(b)

CC: Lee Greenberg  
12058 Craigview Court  
St. Louis, MO 63146